

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: November 13, 2008 Signature: \_\_\_\_\_

(Brian R. Tomkins)

172-24C



Docket No.: SPINE 3.0-436 CIP CIP CIP I  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Letters Patent of:  
Ralph et al.

Patent No.: 6,863,688

Issued: March 8, 2005

For: INTERVERTEBRAL SPACER DEVICE  
UTILIZING A SPIRALLY SLOTTED  
BELLEVILLE WASHER HAVING  
RADIALY SPACED CONCENTRIC  
GROOVES

**PETITION UNDER 37 C.F.R. § 1.78(A)(3) TO CORRECT PRIORITY  
INFORMATION**

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**I. SUMMARY**

This petition is submitted to correct the priority information in U.S. Patent No. 6,863,688 ("the '688 patent"). In particular, the relationship information, in the original filing on October 11, 2001 and in the Preliminary Amendment filed on April 8, 2002, for the applications from which benefit is claimed is believed to be incorrect and thus correction is sought. The petition fee set forth in 37 C.F.R. § 1.17(t) of \$1,400.00 is provided herewith.

Petitioner submits that the Domestic Priority Data as stated in the Filing Receipt (mailed October 24, 2001) is

944575\_1.DOC

11/18/2008 WABDEL1 00000010 121095 6863688

02 FC:1454 1410.00 DA

incorrect. Petitioner requests that the Domestic Priority Data be revised to *"This application is a continuation-in-part of U.S. Patent Application Serial No. 09/970,479, filed October 4, 2001, which is a continuation-in-part of 09/968,046 filed on October 1, 2001, now abandoned."* as shown in the attached Request for Certificate of Correction and Certificate of Correction inadvertently filed on February 6, 2008 without this Petition. Any delay by Petitioner in submitting the correct priority data to the U.S. Patent & Trademark Office ("USPTO"), from the time the claim was due to the date the claim was filed, was unintentional.

## II. FACTS

A statement of domestic priority data, on the first page of the specification of the '688 patent, filed October 11, 2001, included a claim for priority under 35 U.S.C. §120 as a *"continuation-in-part of U.S. Patent Application Serial No. 09/789,936 filed February 15, 2001, which is fully incorporated herein by reference."* The previous prosecuting attorney, recognizing the priority was incorrect, filed a Preliminary Amendment on April 8, 2002 which included a claim for priority under 35 U.S.C. §120 as a *"continuation-in-part of U.S. Patent Application Serial No. 09/970,479, filed October 4, 2001, which is fully incorporated herein by reference."* No Application Data Sheet was filed with the application.

Subsequent to the filing of the '688 patent, the '688 application, along with all the related files, were transferred as just one part of a sizeable patent portfolio, to the law firm of Lerner, David, Littenberg, Krumholz and Mentlik, llp ("Lerner, David"). A revocation and substitution of attorneys was executed by the assignee and received by the USPTO on April 25, 2005. A Notice of Acceptance of Power of Attorney was mailed on May 23, 2005 by the USPTO.

After the transfer of files, the prosecuting attorney at Lerner David did not recognize that the domestic priority information in the '688 patent was incorrect as the patent issued on March 8, 2005 and no prosecution took place after the revocation and substitution of attorneys was executed by the assignee and received by the USPTO on April 25, 2005.

The previous prosecuting attorney incorrectly claimed priority to U.S. Application 09/789,936 (filed February 15, 2001), now abandoned.

### **III. NATURE OF PETITION**

Petitioner respectfully submits this petition in connection with the correction of domestic priority, asserting that the delay by Petitioner in submitting the correct priority data to the USPTO, from the time the claim was due and the date the claim was filed, was unintentional.

For the good cause shown, it is respectfully requested that the instant Petition be granted and the priority corrected to *"This application is a continuation-in-part of U.S. Patent Application Serial No. 09/970,479, filed October 4, 2001, which is a continuation-in-part of 09/968,046 filed on October 1, 2001, now abandoned."*

The Director is hereby authorized to charge our Deposit Account No. 12-1095 to cover the fee set forth in 37 C.F.R. § 1.17(t). If there are any additional charges in connection with this requested Petition, please charge Deposit Account No. 12-1095 therefor.

Dated: November 13, 2008

Respectfully submitted,

By   
\_\_\_\_\_  
Brian R. Tomkins

Registration No.: 58,550  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090  
(908) 654-5000  
Attorney for Applicant